

PUBLIC SERVICE COMMISSION  
WEST VIRGINIA  
CHARLESTON

CASE NO. 02-0254-T-C  
NORTH COUNTY COMMUNICATIONS CORP..

Complainant.

v.

VERIZON WEST VIRGINIA INC.,

Defendant.

CASE NO. 02-0722-T-CN

NYNEX LONG DISTANCE COMPANY, dba  
VERIZON ENTERPRISE SOLUTIONS

CASE NO. 02-0723-T-CN

BELL ATLANTIC COMMUNICATIONS, INC., dba  
VERIZON LONG DISTANCE

**COMMISSION STAFF'S POST-HEARING BRIEF**

*11/16/02*

## TABLE OF CONTENTS

	<u>Page No.</u>
I INTRODUCTION	2
A. Purpose And Requirements Of Section 271 Of The Act.	2
B. Track A Showing/State Of Competition In The West Virginia Local Market	2
C. Applicability Of State Law In The Section 271 Process.	4
II. COMPLIANCE WITH THE 14-POINT CHECKLIST	6
A Checklist Item 1: Interconnection.	6
1. Interconnection – Evidence <del>of</del> Verizon's Non-Compliance With Its Interconnection Obligations, Case No. 02-0254-T-C	7
2. Collocation	9
Staff's Conclusions and Recommendations.	13
B Checklist Item 2: Non-Discriminatory Access To Network Elements	13
1. Non-Discriminatory Access to Verizon-WV's OSS.	15
a. Billing Disputes and Dispute Resolution.	15
Staff Conclusions and Recommendations.	18
b. Directory Listings and Publication.	19
1. KPMG Did Not Test Verizon's Directory Listings Fully.	21
Staff's Conclusions and Recommendations.	22
2. Verizon's LSR Ordering Process Compels CLECs to Police Verizon's Directory Listings Errors.	23
a. Problems with th DLLDLR.	24
b. Problems with the LVR.	25
c. The CLECs Have To Police Their Directory Listings.	26
Staff's Conclusions and Recommendations	28
2. Access to UNE Combinations.	31
a. "No Facilities," "No Build." and Special Access.	31
i. Hi-Cap Loops.	31
Staff's Conclusions and Recommendations.	33
b. Access to Expanded Extended Loops (EELs).	34
i. Coordinated Ordering of EELs.	34
Staff's Conclusions and Recommendations.	39
3. UNE Pricing in West Virginia – the Settlement's Proposed Rates.	42
C Checklist Item 3: Access To Poles, Ducts, Conduits And Rights-of-Way.	44
D Checklist Item 4: Unbundled Local Loop Transmission.	44
E Checklist Item 5: Unbundled Local Transport.	44
F Checklist Item 6: Unbundled Local Switching.	46
G Checklist Item 7: 911/E911 Directory Assistance, Operator Services	46
H Checklist Item 8: White Pages Directory Listings.	46
I Checklist Item 9: Access To Telephone Numbers.	47
J Checklist Item 10: Access To Data Bases And signaling.	48
K. Checklist Item 11: Local Number Portability.	48
L Checklist Item 12: Local Dialing Parity:	49
Staff's Conclusions and Recommendations	51
M Checklist Item 13: Reciprocal Compensation.	51
1. Verizon-WV's "GRIP" Policy.	53

	Staff Conclusions <b>and</b> Recommendations.	54
2.	Compensation For Internet-Bound Local Traffic.	55
	Staff's Conclusions and Recommendations.	57
N.	Checklist Item 14: Resale	60
III	VERIZON-WV'S PROPOSED CARRIER-TO-CARRIER PERFORMANCE METRICS.	60
A,	Filing Corrected C2C Reports.	61
B.	Document Retention.	61
IV	VERIZON-WV'S PROPOSED PERFORMANCE ASSURANCE PLAN.	62
V	CONCLUSION	63

#### APPENDIX A

Staff Post Hearing Exh 1

#### APPENDIX B

NY Special Access Metrics

#### APPENDIX C

Mass /R I EELS Tariff Provisions

Commission Staff (Staff?), by the undersigned counsel, hereby submits its post-hearing brief in these consolidated proceedings in accordance with the Commission's October 18, 2002, bench order governing post-hearing procedural matters.'

**CASE NO. 02-0254-T-C**

Verizon West Virginia Inc. (Verizon-WV) violated provisions of the Communications Act of 1934, as amended (the Act), Federal Communications Commission (FCC) rules implementing the Act, as well as provisions of the W. Va. Code and the Commission's rules, in its dealings with North County Communications Corp. (NCC): (1) by unreasonably delaying the negotiation, execution and submission, for Commission approval, an interconnection agreement (ICA) governing the relationship between the companies; (2) by rejecting NCC's request to interconnect with Verizon at a technically feasible point in Verizon's network, and otherwise unreasonably delaying NCC's interconnection with the company; and (3) by refusing to route traffic to NCC's 555 numbers over local interconnection trunks.

NCC ascribes a malicious, anti-competitive animus toward CLECs as the basis for the Verizon's complained of actions. Staff is not prepared to go that far. Instead, Verizon's behavior toward NCC reflects a corporate attitude that CLECs must conform their business models and practices to fit Verizon's internal policies and procedures, despite the fact that this may result in violations of the Act, FCC rules or state law. This attitude stands the Act on its head. In seeking to open the local exchange telecommunications market to competition,

---

<sup>1</sup>Staff is filing, separately, its proposed findings of fact and conclusions of law simultaneously herewith.

Congress intended to encourage new entrants, with new services and new ideas about how to provide those services, to enter the local market -- with the idea that this would be good for consumers. AT&T v. Iowa Utilities Board, 525 U.S. 366, 371, 119 S.Ct. 721, 726 (1999). Congress did not intend that the local monopoly should dictate to new entrants how they would do business. Staff urges the Commission to keep this simple, but critical, point uppermost as it considers the parties' arguments in this proceeding.

#### **I. THE BURDEN OF PROOF IN THIS PROCEEDING.**

As the complainant, NCC has the burden of proof to establish, a preponderance of the evidence, that Verizon-WV violated the Act, FCC regulations implementing the Act, or applicable state law, including the Commission's orders and regulations. Lester v. Flanagan, 113 S.E.2d 145 (W. Va. 1960); Prettvman v. Hopkins Motor Co., 81 S.E.2d 78 (W. Va. 1954). However, once NCC establishes a prima facie case that Verizon has violated either federal or state law, the burden of proof shifts to Verizon to rebut NCC's case. Flanagan, 113 S.E.2d at 89. This requires Verizon to come forward with evidence of its own that, likewise by a preponderance of the evidence, rebuts any showing made by NCC.

NCC has established that Verizon violated the Act, the FCC's regulations implementing the Act, and that these violations are "unreasonable utility practices," under W. Va. Code § 24-2-7, and violations of the Commission's rules. Violations of federal law are considered "unreasonable utility practices," for purposes of W. Va. Code § 24-2-7. See "Order," Cook, et. al. v. Appalachian Utilities, Case No. 8882, 65 ARPSCWV 507, 510 (Nov. 21, 1977)(utility's violations of, among other things, the Federal Safe Drinking Water Act.

violated W. Va. Code § 24-2-7). In addition; the Commission has promulgated rules incorporating relevant provisions of the Act. and Verizon's violations are therefore violations of those rules as well.

**II. VERIZON VIOLATED THE ACT BY FAILING TO NEGOTIATE IN GOOD FAITH THE PARTICULAR TERMS AND CONDITIONS OF AN INTERCONNECTION AGREEMENT WITH NCC.**

Verizon-WV failed to negotiate in good faith, in accordance with Section 252 of the Act, the particular terms *and* conditions of agreements to fulfill the duties described in 47 U.S.C. §§ 251(b) and 252(c)(1)-(5), in violation of 47 U.S.C. § 251(c)(1), and 47 C.F.R. § 51.809(a), by unreasonably delaying NCC's efforts to negotiate, execute and have submitted to the Commission for approval, an ICA that would establish its relationship with Verizon-WV.

In accordance with Section 252(i) of the Act, NCC opted into an ICA previously approved by the Commission -- namely the ICA between Verizon-WV and MCI Metro Access Transmission Services, Inc. (MCI) See "Commission Order," MCI Metro Access, Case No. 97-1210-T-PC (Jan. 13, 1998). It took over 9 months -- from July 5, 2000, to January 19, 2001 -- to negotiate, execute and file the ICA opted into with the Commission for approval. This was entirely too long and the majority of the delay was attributable to Verizon's willful, or at best, unreasonably negligent, delay

**A. Verizon Is Obligated By Both The Act And Commission Rules To Negotiate Interconnection Agreements In Good Faith.**

**1. Section 252(b)(5) of the Act, and the FCC's Implementing Regulations.**

Section 251(b)(1) of the Act obligates Verizon to negotiate in good faith with

requesting carriers (i.e., CLECs) the particular terms and conditions of agreements to fulfill its obligations under Sections 251(b) and (c) of the Act. 47 U.S.C. § 251(b)(1). Pursuant to Section 252(i) of the Act, this includes the duty to make available to any other telecommunications carriers. “any interconnection, service, or network element” provided for in an agreement approved by a state commission, “upon the same terms and conditions as those provide in the agreement”. 47 U.S.C. § 252(i). Under Section 252(b)(5), “the refusal of any other party to the negotiation to participate further in the negotiations . . . shall be considered a failure to negotiate in good faith”. 47 U.S.C. § 252(b)(5).

Verizon’s obligation to participate in interconnection negotiations, including negotiations to opt into an approved agreement, were expanded upon by the FCC, which further defined “refusal to negotiate” in rules promulgated in August 1996.. The FCC’s rule provides:

*An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.*

47 C.F.R. § 52.809(a) (emphasis added). In other words, an ILEC, such as Verizon, violates Section 252(i), and therefore Section 251(b)(5), if it unreasonably delays to make available, -- upon the same rates, terms and conditions -- interconnection, service or network element arrangements contained in any agreement, to any carrier exercising its rights under Section 252(i) of the Act.

## **2. The Commission’s Telephone Rules Impose the Same Duty.**

The obligation to negotiate in good faith is also a requirement of West Virginia law. The

Commission amended its Rules and Regulations for the Government of Telephone Utilities, 150 C.S.R. Series 6 (Telephone Rules); shortly after NCC submitted its request to opt into the MCIIm ICA to Verizon. "Commission Order." General Order 187.16 (Aug. 11, 2000). The amendments became effective on October 10, 2000, after NCC had executed the adoption letter opting in to the MCIIm ICA but before the agreement had been filed with the Commission. Among other things, those rules adopted, wholesale, the provisions of the Act imposing obligations on ILECs to negotiate, in good faith, agreements implementing their duties under Sections 251(b) and (c)(1)-(5) of the Act. The Telephone Rules likewise made it clear that the refusal of a party to participate further in interconnection negotiations is a violation of the duty to negotiate in good faith. See C.S.R. §§ 150-6-15.3; generally, and 11.4.a... in particular.

Thus, if Verizon-WV unreasonably delayed filing the ICA opted-in to by NCC between October 11, 2000 (the Telephone Rules' effective date), and January 19, 2001, Verizon-WV violated its duties under Section 15 of the Telephone Rules, in violation of W. Va. Code § 24-2-7(a)

**B. Verizon Violated Its Obligation To Negotiate In Good Faith By Unreasonably Delaying NCC's Efforts To Opt In To The MCIIm ICA.**

**1. Verizon Purposefully, and Unlawfully, Delayed Filing NCC's Opt-In to the MCIIm ICA.**

By its own admission, Verizon unilaterally refused to participate further in the negotiation of NCC's request to opt into the MCIIm ICA while it investigated NCC's operations for at least 4-weeks. Although the Act does not indicate that, in order to be a violation of



Section 252(b)(5), the refusal to participate further in negotiations must result in no agreement, Staff believes that an ILEC's refusal to negotiate further: if only for a time, is a violation of Sections 252(b)(5) & (i), as well as 47 C.F.R. § 52.809(a), even if an ICA is ultimately executed after negotiations resume.' See Bell Atlantic - DE, 77 F.Supp.2d 492, 503-04 (D. Del. 1999). Unilaterally holding up a request to opt in to a Commission approved ICA while the ILEC investigates a CLEC's legal business practices is unreasonable.

Staff has no problems with Verizon's actions between April 4, 2000, when NCC first requested to negotiate an ICA, and July 5, 2000, when it exercised its right to opt in to the MCIIm ICA pursuant to Section 252(i) of the Act.. Staff's problems with Verizon begin after it received NCC's July 5, 2000, request.

After receiving NCC's July 5, 2000, request, Verizon purposefully, and unlawfully, delayed the negotiation and execution an IC4 for at least 1 month. Verizon-WV admits there was at least a 4-week delay in negotiating NCC's July 5, 2000, request to opt-in to the MCImetro IC.4, occasioned by its legal department's "investigation" of NCC's operations in California. This investigation was revealed, for the first time, during oral argument regarding NCC's request to strike certain portions of the pre-filed rebuttal testimony of Verizon-WV's

---

'Such a result would be ludicrous. Consider the following example: Carrier A submits a request to Carrier B, advising that it wishes to opt-in to a previously approved ICA. Carrier B decides to sit on the request for 5 months -- no response, no negotiations -- until Carrier A forces the matter by filing a filing with the state commission. Then Carrier B sends an adoption letter to Carrier A. There would be no violation of Sections 252(b)(5) & (i), or 47 C.F.R. § 52.809(a) if the commission or court decided that, so long as an agreement is ultimately negotiated; there has been no failure to negotiate in good faith.

president. Ms. Given. During that argument. Verizon-WV's legal counsel made the following remarks:

. . . the point of Ms. Given's testimony was to point out a *concern that Verizon had that NCC might have been entering the West Virginia market in order to set up a reciprocal compensation scheme* to provide service for free for the sole purpose of gathering reciprocal compensation. In fact, *that was one of Verizon's concern at the time that h%C did seek to opt-in to an agreement to do business in West Virginia.* . . . [T]his newspaper article . . . raised questions in Verizon's mind at the time about what NCC was in fact doing. *Verizon has a strong interest in not having carriers set up these types of fraudulent schemes.* . . . Verizon had learned through other sources, in particular, a proceeding in California, from testimony of a witness from Pacific Bell, that in fact NCC may have been engaging in this type of activity in California. . . *Verizon learned that this might have been the case and it was in fact a concern at the time.*

Tr. I. at 10-12 (emphasis added).'

True to her counsel's word, Ms. Given testified about Verizon-WV's concern over NCC's "fraudulent scheme,"<sup>4</sup> noting that the FCC had limited reciprocal compensation for Internet-bound traffic, and then noting that another way to create traffic imbalances to reap reciprocal compensation is to send chat rooms. Tr. II, at 57-58; see also VZ Exh. 1, at 9. "Evidence" NCC had provided service to a chat room in California made this an "issue of concern" that the Commission had not addressed. *Id.* During examination by her attorney, Ms. Given stated, for the first time, that an internal investigation of NCC by Verizon's legal department delayed any further action on NCC's July 5, 2000, opt-in request. Ms. Given

---

'The issue of NCC's alleged involvement with sex chat lines, as well as Internet service providers (ISPs), was raised briefly in Ms. Given's pre-filed rebuttal testimony. Verizon Exh. 1, at 9 (Given Reb.).

'Just to reiterate, "fraudulent scheme" was the term used by Verizon's counsel.

stated:

. . . I recall that there was an issue with this recip comp situation and the potential for a problem in West Virginia . . . . After filing [my] rebuttal testimony . . . I then recalled that there was a brief period early on where there was a legal review based on the information that we saw in California.

Tr. II, at 69. According to Ms. Given, this “brief” review took approximately 4 weeks, beginning in August 2000, and ending in September, 2000. *Id.* at 71. After the review was completed, Verizon-WV sent the adoption letter back for NCC’s execution. *Id.* at 72

Verizon’s unilateral decision to halt the interconnection negotiation process while it investigated NCC was an unlawful refusal to negotiate with NCC, in violation of Section 252(b)(5) of the Act. As Ms. Given herself noted, the FCC and the Commission previously limited reciprocal compensation for Internet-bound *telecommunications* traffic. Nowhere did the FCC or the Commission suggest that it was illegal, or a “fraudulent scheme,” for a CLEC to provide service to ISPs for purposes of reaping compensation as a result of traffic imbalances that result from Internet calls, up to the limits allowed by the agencies. Moreover, nowhere had either agency suggested that other types of arrangements that could lead to imbalances in carriers’ terminating traffic were illegal or fraudulent.<sup>5</sup> The Act does not empower Verizon to unilaterally refuse to participate in further interconnection negotiations, while it mulls the morality or legality of a CLEC’s business **pian**. Verizon’s obligation was to

---

<sup>5</sup> ‘CLECs serving chat rooms is only one, legal, arrangement that could lead to such imbalances. Such imbalances could also arise if a CLEC targeted take-out food stores (like Domino’s. *for example*), or ticket outlets, radio call-in shows, or mail-order retailers. Such customers are likely to receive far more incoming calls than make outgoing calls – and that’s perfectly legal under the Act.

continue negotiations with NCC -- which the company itself admits was a fiction. since there is really nothing to “negotiate” and execution of an opt-in ICA is virtually “automatic.” Tr. I, at 177<sup>6</sup>

Second, Verizon claims that the 4-week delay occasioned by its legal department’s review, was, in **parr**, due to the work stoppage that affected Verizon operating companies from August 6, to August 24, 2000. Tr. II, at 75. This excuse stinks Staff as specious. For one thing, NCC sent its request to opt-in to the MCImetro ICA to Verizon on July 5, 2000 – more than a month before the strike began. NCC Exh. 3A, p. 2. And in any event, if Verizon unilaterally delays interconnection negotiations, it bears the legal consequences of that delay regardless of any external factors. such as a strike, that may increase the delay.

Finally, Verizon admits that it never made *an* effort to communicate its concerns *or* the fact of its investigation to NCC. Tr. II, at 90-91; Tr. I, at 38-35. If Verizon had concerns **about** NCC’s operations, it should have asked NCC. This certainly would have shortened Verizon’s review. and would have avoided some of the frustration clearly felt by NCC as the negotiation process dragged on

**2. In Any Event, Verizon Unreasonably Delayed Filing The MCImetro ICA Opted Into By NCC, In Violation Of Sections 252(b)(5) And (i) Of The Act. And 47 C.F.R. § 52.809(a).**

Setting aside the issue of the 4-week delay occasioned by Verizon’s review of NCC’s operations. Verizon still violated Section 252(b)(5) of the Act by unreasonably delaying the

---

<sup>6</sup>The Commission may take notice of the fact that the MCImetro ICA has been a model ICA in West Virginia: opted into by at least at least 14 CLECs. See Appendix A

filing of NCC's ICA *after* its execution.

By its own admission, Verizon's legal review of NCC's operations was over by September 6, 2000, when Verizon returned an adoption letter for NCC's signature. Tr. II, at 72. Verizon nowhere explains why it took it another 4 months -- from September 22, 2000, when NCC returned the executed adoption letter to it. *via Federal Express*' -- to January 19, 2001, when Verizon finally filed NCC's ICA for Commission approval.

Verizon-WV admits that it cannot account for 2 months worth of the delay in filing NCC's executed ICA -- from September 29 to November 30, 2000. Tr. II, at 73. On November 30, 2000, Verizon claims it drafted a petition for approval of NCC's ICA to file with the Commission. Then, inexplicably, Verizon redrafted the petition to be a joint filing. Tr. II, at 73. Ms. Given speculated that this ordinarily would have been done in response to a communication from the other party, but there is no record of any communication from NCC. *id.* at 71-74. Then the petition was sent to NCC's counsel in New York and ultimately was filed with the Commission on January 19, 2001. Again, Verizon has no record of when the petition was returned by NCC's New York counsel. *Id.* at 74. So again, even by Verizon's own account, there is another unexplained 1 ½ months of delay -- from December 4, 2000, to January 19, 2001, when the petition for approval was finally filed with the Commission.

The entire process of getting from the initial request for negotiation of an ICA thus spanned 9 months -- over half of which was directly attributable to Verizon's willful or

---

<sup>31</sup> Verizon-WV apparently received the adoption letter on September 29, 2000. Tr. II, 73.

unexplained, and unreasonable. delay. This delay is wholly unacceptable, especially when that delay is considered in conjunction with the fact that:

- (1) In the adoption letter it drafted, signed and sent to NCC, Verizon undertook to “promptly [file] upon receipt of an original of this adoption letter countersigned by [NCC]”. NCC Exh. 3B, p. 3.
- and
- (3) In NCC’s letter to Verizon, *returning* the executed adoption letter, NCC requested that Verizon “[p]lease file same with the [Commission] as soon as possible”. NCC Exh. 3B, p. 1.

Verizon honored neither its own undertaking, nor NCC’s request.

Even Verizon concedes that processing NCC’s JCA took “a longer interval than is typical”. Tr. II, at 74. Based on its review of 35 ICAs (excluding agreements with wireless carriers and agreements providing exclusively for resale), Verizon suggests that most – 22 of those reviewed – took less than 120 days to complete, from date of execution to approval by the Commission. Slightly more than one-third of the ICAs – 13 to be precise – took between 120 and 260 days to complete. Tr. II. at 74-75.

Verizon’s calculations are interesting -- certainly 120-260 days seems an overly long time to get Commission approval of an executed ICA -- but not necessarily helpful. A more appropriate analysis would be to review situations in which carriers opt into a Commission-approved ICA, which is what NCC did. Moreover, the relevant period to review is not from execution of the letter or ICA to Commission approval, but the date from execution to filing

by Verizon.<sup>8</sup>

Staff did its own review of those cases in which a CLEC opted into the MCIIm ICA. The results of that review are attached as Appendix A. Of the *14* MCIIm opt-ins reviewed, 5 (including NCC)<sup>9</sup> took more than 3 months for Verizon to file -- and NCC was not the worst. For example, it took Verizon 5 months to file Broadstreet Communications' ICA with the Commission. It took 8 months to file CoreTel's. Staff has reviewed enough opt-in filings to know that Verizon uses a template for its adoption letter, and this template includes Verizon's undertaking to "promptly file" the ICA for approval. NCC's case was not the only one in which Verizon's failed to perform its obligations under Section 252 of the Act and 47 C.F.R. § 52.809(a).

### **C. Conclusion.**

Based on the foregoing, the Commission should find that Verizon-WV unreasonably, and unlawfully, delayed negotiating, executing and filing NCC's ICA, in violation of 47 U.S.C. §§ 252(b)(5) & (i), 47 C.F.R. § 52.809(a) and Telephone Rule 15.4.a.

---

<sup>8</sup>In Staff's opinion, Verizon's responsibility to negotiate in good faith, etc. ends when it files a petition for approval of the opt-in ICA with the Commission, consistent with its undertaking to the CLEC.

<sup>9</sup>Broadstreet Communications (Case No. 01-0239), NCC (Case NO. 01-0167), CoreTel (Case No. 01-0251), Net2000 (Case No. 00-0674), and CTSI (Case No. 00-0440). The length of time: from execution to filing: ranged from approximately 2 months to as much as 8 months (for CoreTel).

**III. VERIZON FAILED TO INTERCONNECT NCC'S FACILITIES AND EQUIPMENT WITH ITS NETWORK AT ANY TECHNICALLY FEASIBLE POINT, ON RATES, TERMS AND CONDITIONS THAT ARE JUST, REASONABLE AND NON-DISCRIMINATORY.**

Verizon-WV's actions in response to NCC's request to interconnect with the company's network likewise violated Verizon's duties under Section 251(c)(2) of the Act, 47 C.F.R. § 51.305, and constituted unreasonable utility practices, etc. in violation of W. Va. Code § 24-2-7(a) and Commission rules

**A. Verizon-WV Was Obligated to Accommodate NCC's Request to Interconnect.**

Section 251(c)(2) of the Act governs Verizon-WV's obligations regarding interconnecting its network with another carrier. That section of the Act provides:

In addition to the duties contained in [Section 251(b)], each [ILEC] has the following duties:

\* \* \*

(2) Interconnection – The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the [ILEC's] network –

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the [ILEC's] network;

(C) that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the [ICA] and the requirements of [Sections 251 and 252 of the Act].



47 U.S.C. § 251(c)(2)(A) - (D). This requirement is incorporated in the FCC's rules implementing the Act. See 47 C.F.R. § 51.305

**B. Interconnection .At The 405 MUX Was Technically Feasible.**

NCC's request *to* interconnect at the 405 MUX was allowed under the Act, and the FCC's rules implementing the Act. In its first rulemaking after passage of the Act, the FCC promulgated rules implementing the local competition obligations of carriers under Sections 251 and 252 of the Act, including interconnection. With respect to interconnection, the FCC defined 6 points in an ILEC's network where interconnection is deemed to be technically feasible. The FCC concluded:

We also note that the points of access to unbundled elements . . . discussed below may also serve as points of interconnection (i.e., points in the network that may serve as places where potential competitors may wish to exchange traffic with the incumbent LEC other than for purposes of gaining access to unbundled elements), and thus we incorporate those points by reference here. . . . [W]e have identified a minimum list of technically feasible interconnection points: (1) the line-side of a local switch; (2) the trunk-side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points; and (6) the points of access to unbundled elements.

"First Report and Order," 1/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 (Rel. Aug. 8, 1996), at ¶212 (Local Competition 1st R&O); see 47 C.F.R. § 51.305..

The 405 MUX fits one or more of the 6 designated points where CLECs may interconnect with an ILEC's network, namely "points of access to UNEs," as well as "the line of the local switch." Staff notes that the MCI<sup>1</sup> ICA specifically identifies multiplexers as one

of the components of the local loop, stating:

#### 4.2 Loop Components

MCIm may, at its option, raise the issue of subloop unbundling . . . Loop components may include, but are not limited to the following:

\* \* \*

##### 4.2.1 Loop Concentrator/Multiplexer

MCIm ICA, Attachment III, Section 4.2.1. The 405 MUX is, by all accounts, a multiplexer.

Interconnection with the 405 MUX would have also been interconnection at “the line side of the local switch”. The standard definition of this phrase is:

**Line Side Connection.** A carrier term. A local loop, which connects the customer premise to the carrier network. The carrier community uses this term to describe the customer side of the network, regardless of whether it is specifically in the form of a line or a *trunk*. . . . Also in this context, a “line” connects a network switch to a non-switch (e.g., a telephone set, a computer modem, or a traditional key system). In other words, a trunk connects one switching device to another switching device, while a line connects a non-switching device to another device: which can be in the form of either a switch or a non-switch.

Newton’s Telecom Dictionary, 495 (16th Ed. 2000). NCC sought to interconnect its switch with Verizon’s network at a multiplexer, which again is considered part of the local loop, and was located at the customer’s premises.<sup>10</sup>

In any event, Verizon admitted that interconnection at the 405 MUX was “technically

---

<sup>10</sup> @Staffoes nor seek to belabor this point, but addresses it because, during cross-examination in the hearings in Case No. 02-0809-T-P, Verizon’s witnesses suggested that the 405 MUX did not fall into any of the 6 categories of “technically feasible” interconnection points identified by the FCC. Case No. 02-0809-T-P, Tr. III, at 265-66 (Albert, Fox). In light of the MCIm ICA’s identification of multiplexers as loop components: itself a UNE, as well as what “line-side of a local switch” means, Staff believes the Verizon witnesses were simply wrong.

feasible,” an admission compelled by the fact that Verizon actually provided interconnection at the 405 MUX on an “interim” basis in July 2001. This is conclusive evidence of the technical feasibility of such interconnection. See Local Competition 1st R&O, at ¶198 (“preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points”).

**C. Interconnection At The 405 MUX Was Technically Feasible When Requested By NCC In January 2001.**

Verizon concedes that interconnection with NCC at the 405 MUX was technically feasible, when it implemented its July 2001, “interim” interconnection to accommodate NCC’s need to activate NXX codes it was in danger of losing. However, Verizon contends that NCC’s forecasted traffic demands in March 2001, on their face, would have exceeded the 405 MUX’s capacity and meant that, until NCC’s traffic demands lessened, interconnection at the 405 MUX was not technically feasible. This is really the heart of Verizon’s case on the issue of interconnection. As Staff will show, there is no merit to Verizon’s arguments.

Interconnection at the 405 MUX was “technically feasible” when requested by NCC in January 2001, and before. The evidence established that there was sufficient capacity on the 405 MUX to accommodate NCC’s initial request for 2 T-1s to establish interconnection, as well as NCC’s January 2001, estimate that it would require 33 T-1s for its trunking requirements for the next 6 months. In January 2001, of the 3 DS3’s capacity on the 405 MUX, 1 DS3 was exhausted, 1 DS3 was completely unused, and only 19 T-1s on the third DS3 were in use. NCC Exh. 1, at 12-13; NCC Exh. 5, at 12-13; Tr. III, at 153-155. This means that

the 405 MUX had available capacity for 47 T-1s. In addition, 6 of the T-1s then in use were associated with the customer that intended *to* switch service from Verizon to NCC. *Id.* at 13. Practically speaking, there were 53 T-1s available on the 405 MUX when NCC first requested to interconnect with Verizon-WV at this point.

**D. Verizon-WV Improperly Refused NCC's Request To Interconnect At The 405 MUX.**

Despite NCC's request to interconnect at the 405 MUX, and the information NCC provided to Verizon regarding available capacity on the facility, Verizon refused to consider NCC's request. Instead Verizon advised NCC that it had 2 choices: either physically interconnect over dedicated entrance facilities provided by Verizon or another carrier, or collocate in Verizon's central office. NCC Exh. 3F, ¶5. Verizon's refusal to interconnect, or even consider interconnecting, at the 405 MUX was unlawful under both the Act and state law.

**1. The Interconnection Requested Was Consistent With NCC's ICA.**

Verizon trotted out one rationale for its denial of NCC's January 2001, interconnection request for the first time during the October 16-18, 2001, hearing. Verizon asserted that the MCIm ICA opted into by NCC contemplated *only* collocation with Verizon-WV, not the interconnection requested by NCC. Tr. II, at 130,155. According to Verizon, if NCC wanted to interconnect at the 405 MUX, it should have opted into a different ICA. *Id.* at 132. As evidence of its good citizenship, Verizon went so far as to state that it "worked through" the problems associated with NCC's interconnection request, "even though [the MCIm ICA] didn't contemplate other things besides collocation". *Id.* at 132-33.

As shown by Staff during the hearing, Verizon's assertion is patently wrong. On cross examination, Ms. Given admitted that numerous provisions in the MCImetro ICA dealt with physical interconnection, as opposed to collocation. Tr. II, at 155-158; compare MCIIm IC.4. Attachment IV ("Interconnection"); with Attachment V ("Collocation"). Verizon's network engineering witness later conceded that the MCIIm ICA contemplated interconnection, as well as collocation.. Tr. III, at 177-178.

**2. The Trunking Forecasts Insisted Upon By Verizon Were Not Required By NCC's ICA.**

The "collocation only" argument was not Verizon's only horse in the race, however Verizon is also running an argument that NCC "time and time again" failed to provide the "required trunking forecasts" and that it was the lack of such forecasts that justified Verizon's rejection of NCC's request to interconnect at the 405 MUX. Tr. II, at 179, 212, 248-249; VZ Exh. 4A. at 5. This horse at least gets out of the gate -- but it doesn't finish the race, let alone win, place or show.

First, NCC was not obligated to provide the trunking forecasts demanded by Verizon, either by law or by its ICA. Second, NCC's provided sufficient information to Verizon at the time of its interconnection request to allow the company to go forward with implementing interconnection at the 405 MUX. Third, to the extent Verizon required NCC to "prove" that there was sufficient capacity on the 405 MUX to accommodate its interconnection request, it violated the FCC's rules regarding interconnection. Fourth, the record establishes that the trunking forecast demands are a smokescreen, to blot out what appears to be a company-wide

policy barring CLECs from interconnecting at “loop facilities” like the 405 MUX

**a. NCC was not obligated to provide the trunking forecasts demanded by Verizon.**

Venzon identified 2 trunking forecasts that NCC was required to provide in order to proceed with interconnection: (1) a “transport capacity” forecast, and (2) an “A Location/Z Location” trunking forecast. Tr. III, at 172-173; Verizon Exh. 4.4, at 5. Verizon described the “transport capacity” forecast as a forecast of all transport capacity for all services between Verizon’s central office and NCC’s central office, used to design the connections between the 2 “offices” (i.e., their switches). VZ Exh. 4A, at 5. With respect to the “A Location/Z Location trunking” forecast, Verizon described this as a forecast of the specific trunk groups that would underlie the transport facilities, used to order the quantities and endpoints of the interconnection trunks. Venzon Exh. 1.4.at 5

It is clear that Verizon demanded that NCC provide 2 years’ trunking data in association with each forecast. It is also clear that NCC did not provide 2 years’ trunking data at the time of its request to interconnect at the 405 MUX in January 2001. And finally, it is clear that this NCC’s failure to provide 2-year forecasts is not grounds for refusing to interconnect at the 405 MUX

**b. NCC was not obligated to provide the “transport capacity” forecast at all.**

Verizon admits that the “transport capacity” forecast what Verizon’s account manager for NCC was demanding of NCC in advance of the January 24, 2001, interconnection design conference call. See NCC Exh. 3C-005; VZ Exh. 4A, at 5; Tr. III, at 172. Verizon’s account

manager for NCC. Ms. McKernan, stated that this forecast was “required” by Verizon’s CLEC Handbook, and made it clear, several times, that NCC could not begin the interconnection process without having submitted its 2-year “transport capacity” forecast as required by the Handbook. NCC Exhs. 3C-005, 3C-007, 3C-009; Tr. II, at 249. In fact, Ms. McKernan admitted that she never looked at the trunking requirements in NCC’s ICA, or any other provision of NCC’s ICA. Tr. II, at 248-249.

Unfortunately for Verizon, NCC was not legally obligated to provide Verizon with the “transport capacity” forecast it demanded -- and Verizon cannot legally rely on its absence for rejecting NCC’s interconnection request. The “transport capacity” forecast apparently is included in the forecasting guidelines set forth in Verizon’s CLEC Handbook. See CLEC Handbook, Section 8.3 (a copy of the relevant provisions of Verizon’s current, March 2001, CLEC Handbook is attached as Appendix B). Tr. II, at 249; Tr. III, at 172.

However, the CLEC Handbook makes it clear that its “guidelines” are intended to assist CLECs in their relationship with Verizon, and expressly provides that it does not replace or supersede the provisions contained in a carrier’s ICA. The following provisions of the Handbook are worth noting:

#### **CLEC Demand Forecasts -- General Requirements**

In order to . . . best serve CLECs in meeting their business goals and end user requirements, Verizon will request demand forecasts of unbundled network elements and interconnection products on a semi-annual basis. *New entrants will be asked to provide an initial forecast upon entry into the market. Subsequent to market entry, active CLECs will be asked every six months to provide a current year plus two year view of the approximate number of units of UNE and interconnection services that the CLEC expects to require in a*

particular geographic area. . . . *A forecast should be submitted on Verizon provided templates located at: <http://www.verizon.com/wholesale>.*

CLEC Handbook, Secnon 8.3, p. 1 of 4 (emphasis added)

The purposes of this Interconnection **Trunk** Forecast section is to provide guidelines for the formats and language *to* be used in exchanges of *trunk* iorecast information between CLECs and Verizon.

*These guidelines in no way supersede any . . . existing or future Inierconnection Agreements between Verizon and individual CLECs.*

CLEC Handbook, Section 8.3.1.1, p. I of 4 (emphasis added)

*On a semi-annual basis . . . CLECs will be requested ioprovide Verizon with a cui-rent year plus two-war detailed forecast of traffic and volume requirements for all Interconnection Trunking. . . . This forecast should provide volume information on the following [11] types of interconnection trunks . . .*

CLEC Handbook, Section 8.3.1.4, p. 2 of 4 (emphasis added).

*CLECs are required to provide a forecast of **trunk** requirements six months prior to the desired in-service dale. This may require that the CLEC submit forecasts in advance of the signing of the interconnection agreement.*

CLECs will need to have internally performed initial network design, *including the development of forecasted volumes* . . . .

CLEC Handbook, Section 6.3.1, p. 1 of 15 (emphasis added)

#### 6.3.1.16      **Network Planning**

\* \* \*

. . . CLECs need to schedule a design meeting with Verizon. The purpose of the design meeting is to allow representatives from the CLEC and Verizon to design in detail how each company's networks will interconnect. . . .

\* \* \*



... In addition. *CLECs should be prepared to share their initial forecasts with Verizon at this meeting.* ...

CLEC Handbook. Section 6.3.1.16, p. 11 of 15 (emphasis added)

After the completion of the design meetings, *each carrier will provision (i.e., build) the facilities required to establish the network interconnection.* During the building phase, there will usually be interaction between representatives from the CLEC and Verizon to ensure that the interconnection points are built per specifications.

CLEC Handbook, Section 6.3.2 (emphasis added)

The above-quoted provisions of the CLEC Handbook make several points very clear. First, initial trunking forecasts from new entrants are something different than the semi-annual; 2-year trunking forecasts that Verizon requests. In contravention of the CLEC Handbook to which she ascribed Biblical significance, Ms. McKernan repeatedly demanded that NCC provide the semi-annual trunking forecast. instead of acknowledging NCC's submission of its own, internally-generated initial trunking forecast. Similarly: the Verizon technical support people working with Ms. McKernan also acted at variance with the Handbook in rejecting NCC's internally-generated initial trunking forecast.

Second; the above-quoted provisions of the Handbook show that trunking forecasts are requested by Verizon – they are not necessarily required by law or any **ICA**. Third. CLECs should be prepared to share their initial forecasts with Verizon at the network planning design meeting. Fourth, much of the forecasting outlined by Verizon “should” be provided. Fifth, Verizon's corporate network planning personnel anticipate building interconnection facilities as a general matter (there is no need for initial forecasts 6 months in advance of the startup